



November 17, 1999

Ms. Katherine Minter Cary  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR99-3303

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128171.

The Office of the Attorney General (the "OAG") received a request for "information pertaining to lawsuits that former Attorney General Dan Morales filed against health maintenance organizations (HMOs)." You have released the petitions, standstill agreements, visitor logs, and telecommunications records to the requestor. You assert that the remaining information is excepted from public disclosure by sections 552.103, 552.107, and 552.111 of the Government Code. We have considered your claims and reviewed the submitted information.<sup>1</sup>

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as

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<sup>1</sup>You have submitted a representative sample of the intra-agency electronic mail. We assume that the sample submitted is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). When a representative sample of the requested information is submitted to this office, the open records letter ruling does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a consequence of the person's office or employment, is or may be a party;  
and

(2) that the attorney general or the attorney of the political subdivision  
has determined should be withheld from public inspection.

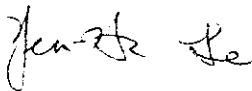
A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991).

You inform us that you have three lawsuits filed against HMOs that are pending in three different Travis County district courts. Thus, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). Accordingly, the OAG may withhold the requested records from public disclosure under section 552.103.

However, we note that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information and such information must be disclosed. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because section 552.103 is dispositive, we do not address your other arguments against public disclosure. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/ch

Ref: ID # 128171

Encl: Submitted Documents

cc: Mr. Andrew Wheat  
Texans for Public Justice  
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(w/o enclosures)